

Chapter XIV

Off-Installation Hazardous Cleanup (Third Party)

A. INTRODUCTION.

The following policies, procedures and responsibilities apply to all situations arising in the U.S. and its possessions where a DRMS-generated hazardous substance is found outside of a military installation and off-installation cleanup or payment for cleanup is requested of DRMS by Federal, state, local environmental authorities, or by third parties.

B. POLICY.

1. **Immediate Reply.** DRMS will immediately reply to any request for military agency response to discovery of military related hazardous material or waste located in a civilian (public or private) environment. The response will neither automatically assume liability for cost or cleanup of the hazard nor stand in the way of legal or criminal remedies by those responsible.

2. Potential Cleanup.

a. Off-installation hazardous cleanup may be undertaken to mitigate actual or potential DRMS liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by Superfund Amendments and Reauthorization Act (SARA) of 1986. Cleanup would demonstrate DRMS responsibility for protection of the environment and concern for public welfare. See also DRMS-I 6000.1, DRMS Third Party Program Hazardous Waste Manual.

b. As stated in the DoD 4160.21-M, Chapter 10, B.2.v., DLA/DRMS will assume responsibility for the original DoD generating activity, whenever hazardous substances are found or have caused contamination at a Third Party site, if the hazardous substances were correctly identified by the generating activity and turn-in documentation

establishes that the HP was processed through DRMS. Third Party sites will be managed in accordance with DLA's Defense Environmental Restoration Program guidance. DRMS will not assume all CERCLA liability for non-DoD generating activities.

C. PROCEDURES.

1. Environmental Response Actions.

a. Immediately forward requests for off-installation cleanup to: Program Manager, DRMS-LH, (DSN) 932-5906 or drms-lh@mail.drms.dla.mil. Telephone reports will be followed up in writing detailing pertinent data. DRMS-LH will maintain a record of all off-installation response requests and provide direction to the reporting office within 2 hours of receiving the report.

b. DRMS-LH will promptly refer the request to DRMS-G for direction on how to proceed. DRMS-DDB, DLSC-CAAE and DLSC-MMSLP, and DLA Office of Counsel will be consulted as necessary.

c. Each request for assistance will be based on the fiscal and legal constraints that govern DRMS actions. The DRMS Commander will make the decision to retrieve, cleanup, or dispose of this property. Coordination will be processed through the Office of Counsel and others involved. Among the factors that will be evaluated are:

(1) If the items were offered as usable for their originally intended purpose.

(2) Type of packaging, item descriptions and contracts.

(3) Danger to public health and safety.

d. DRMS-LH and DRMS Safety Office will authorize site visits by DRMS employees or agents. The following factors will be considered:

- (1) The value of the information that can be gathered or preserved.
- (2) Access to the property.
- (3) Ability of DRMS personnel to render competent judgment.
- (4) Environmental danger to the site visitor.
- (5) The extent of DRMS involvement.
- (6) Third party site safety plan (see Enclosure 3).

e. All oral or written replies to the public or media concerning the DRMS response to off-installation response requests will originate from the DRMS Office of Public Affairs (DRMS-DDB).

f. DRMS-LH will keep DRMS National and International Commands and DRMOs apprised of events as they develop.

2. Environmental Compensation Actions.

a. All claims by Federal, state, local environmental authorities and third parties for reimbursement or contribution for environmental response actions, involving DRMS generated hazardous substances, will be sent to the Environmental Program Manager, DRMS-LH. DRMS-LH will refer all claims to DRMS-G for evaluation under applicable statute and case law.

b. Settlements at third party sites involving the use of Defense Environmental Restoration Account (DERA) funds must be coordinated with DLSC-CAAE. No agreement involving DERA funds should be entered into unless the funds have been previously approved by DLSC-CAAE. DERA can be used to pay for EPAs future work. Reimbursement for EPAs past costs will come from a Special Appropriation from the U.S. Congress. In all cases use of Judgment Fund will be used were applicable for Third Party Sites.

c. If required, a claims investigating officer may be appointed to investigate and prepare a report of investigation on the underlying facts. DRMS-G will determine the extent to which the request for compensation will be granted.

3. **Operating Procedure.** DRMS responsibilities for off-installation third party sites are at enclosure 1.

4. **CERCLA Section 104(e) Notices.** Procedures for DRMS responsibility for handling CERCLA section 104(e) notices are at enclosure 2. These procedures will be used unless otherwise indicated by DRMS-LH.

5. Responsibilities.

a. *The Program Manager (DRMS-LH) will:*

(1) Assure coordination of environmental response actions within DLSC, HQ DRMS, National or International Commands and DRMOs. This will include requests and budgeting for Defense Environmental Restoration Account Funds and Special Appropriates from U.S. Congress for third party sites.

(2) Provide technical advice and assistance to requesting DoD agencies and other involved third parties.

(3) Collect and distribute data about the off-installation site.

(4) Identify cost recovery actions from sales or disposal contractors who created third party sites and forward this information to DRMS-G, and other offices involved.

(5) Will load into the Third Party Site Tracking Database the initial information to include; site name and number; location; CERCLA action; current status (open for new sites); active status; points of contact including DRMS-LHP, DRMS-G, EPA, State, DRMO, buyer, site owner, or other private persons. Background narrative on the site history including who, what, where, and how DRMS became involved.

(6) Publish on an as needed annual basis and at the end of the fiscal year a DRMS Third Party Program status report for DLA-CAAE.

(7) Ensure that in all Third Party site files are retained for period of 50 years, as required in DLAI 5015.1.660.22.

(8) Initiate follow up actions to identify deficiencies (if any) in the DRMS Sales System that resulted in new Third Party Sites created after enacting our new sales procedures in March 1990 and recommendations on how to prevent similar sites from occurring.

b. *The Executive Vice President of Market Place (DRMS-L) will:*

(1) Provide DRMS sales history of the hazardous substances.

(2) Take appropriate cost recovery actions from sales contractors who created Third Party sites.

c. *The Executive Vice President of Utility (DRMS-T) will:*

(1) Provide hazardous disposal contract information.

(2) Provide emergency contract support for environmental response actions.

(3) Take appropriate cost recovery actions from disposal contractors who created Third Party sites.

d. *The Office of Counsel (DRMS-G) will:*

(1) Provide legal advice and assistance in environmental response actions.

(2) Represent DRMS with environmental authorities and third parties.

(3) Provide legal opinions on environmental compensation and liability issues.

(4) Initiate appropriate steps to ensure actions against other responsible parties are pursued.

(5) Provide legal support to DRMS-LM, DRMS-UP and DRMS-LH on cost recovery actions from sales and disposal contractors who created Third Party Sites.

(6) Coordinate actions with the United States, Department of Justice when applicable or settlements agreements with private parties and using the Judgment Fund.

(7) Coordinate and seek DRMS-LH approval through a formal a Memorandum for Record or other internal document on all settlement agreements.

e. *The Office of Public Affairs (DRMS-DDB) will:*

Provide public affairs and community relations support for Third Party sites.

f. *The Chiefs at Defense Reutilization and Marketing Offices will:*

(1) Immediately report all information regarding off-installation military related hazardous waste or hazardous material accumulation problems to National or International Commands and to DRMS-LH.

(2) Act on instructions received from DRMS regarding emergency response actions.

(3) Forward information that may be needed to maintain a factual public information response.

(4) Upon request, assign an on-scene representation to take charge of DRMS interests at a designated site, including acting as the Contracting Officer Representative at removal actions (after approval from the DRMS Safety Office).